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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,998	06/20/2001	Nicholas V. Nechitailo	A7965	2408

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EXAMINER

NASRI, JAVAID H

ART UNIT	PAPER NUMBER
2839	

DATE MAILED: 09/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/883,998	NECHITAILO, NICHOLAS V.
Examiner	Art Unit	
Javaid Nasri	2839	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 25 June 2002.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-23 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-9, 11-14 and 16-23 is/are rejected.

7) Claim(s) 10 and 15 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on 25 June 2002 is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.      6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in–  
(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or  
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 1, 3, 4 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Field et al.

Field et al discloses an outer (relative term) protective sheath (34, 50, 24), formed from a piece of wound composite tape (see col. 3, lines 57-67), a plurality of stacks (see marked figure 1, attached), which are stranded to be radially positioned within the outer protective sheath, each of the plurality of stacks includes a plurality of buffer tubes (26, 23), optical fiber (22, 25), ribbon (92).

3. Claims 1 and 3-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Hardwick, III et al.

Hardwick, III et al. discloses an outer (relative term) protective sheath (34, 50, 24), formed from a piece of wound composite tape (see col. 3, lines 57-67), a plurality of stacks (see marked figure 1, attached), which are stranded to be radially positioned within the outer protective sheath, each of the plurality of stacks includes a plurality of buffer tubes (26, 23),

optical fiber (22, 25), ribbon (92), each buffer tubes has an outer portion formed from a wound piece of composite tape (see figure 9), gel.

4. Claims 11-13 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Hardwick, III et al.

Hardwick, III et al. discloses a first buffer tube (36d), formed from a piece of wound composite tape (see figure 9, polymeric tape) and optical fiber disposed in the first buffer tube, second buffer tube formed from a piece of wound composite tape and positioned contiguous to the first buffer tube (see figures 17, 18), one optical fiber disposed in the second buffer tube and an outer jacket surrounds the first and second buffer tubes to form a first stack, the outer jacket is formed from a piece of wound composite tape (112, polymeric tape).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Field et al. Field et al. discloses all the limitations of claim 1 as shown above,

However, Field et al. does not disclose:

- a) the stacks are formed to have a triangular shape. It would have been an obvious matter of design choice for the stacks of Field et al to have a triangular shape, since such a modification would have involved a mere

change in the shape of a component. A change in size or shape is generally recognized as being within the level of ordinary skill in the art.

*In re Rose, 105 USPQ 237 (CCPA 1955).*

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hardwick, III et al.

Hardwick, III et al. discloses all the limitations of claims 11-13 as shown above, Hardwick, III et al. also discloses the stacks are in a radial arrangement with respect to a center of the protective sheath (see figure 21).

However, Hardwick, III et al. does not disclose:

- a) the stacks are formed to have a triangular shape. It would have been an obvious matter of design choice for the stacks of Hardwick, III et al to have a triangular shape, since such a modification would have involved a mere change in the shape of a component. A change in size or shape is generally recognized as being within the level of ordinary skill in the art.

*In re Rose, 105 USPQ 237 (CCPA 1955).*

8. Claims 16 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Field et al.

Field et al. discloses outer protective sheath, a plurality of stacks which are stranded to be radially positioned within the outer protective sheath (see marked figure 1, attached), each of the stacks include a plurality of buffer tubes (23, 26) which contain an optical fiber (22), one of the outer protective sheath, the stacks, and the plurality of buffer tubes, has an outer support portion which is formed from a wound piece of composite tape,

However, Field et al. does not disclose:

- a) the stacks are formed to have a triangular shape. It would have been an obvious matter of design choice for the stacks of Field et al to have a triangular shape, since such a modification would have involved a mere change in the shape of a component. A change in size or shape is generally recognized as being within the level of ordinary skill in the art.

*In re Rose, 105 USPQ 237 (CCPA 1955).*

9. Claims 17-19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hardwick, III et al.

Hardwick, III et al. disclose a piece of composite tape (36d, see figure 9), gel, an outer protective sheath formed from a wound piece of composite tape, helically rolling (see figure 7).

However, Hardwick, III et al. does not disclose:

- a) the stacks are formed to have a triangular shape. It would have been an obvious matter of design choice for the stacks of Hardwick, III et al to have a triangular shape, since such a modification would have involved a mere change in the shape of a component. A change in size or shape is generally recognized as being within the level of ordinary skill in the art.

*In re Rose, 105 USPQ 237 (CCPA 1955).*

Note: In regard to claims 17-19, the claimed method language is counter part of the apparatus claimed. Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to develop a particular method for the disclosed apparatus of the cited references.

***Allowable Subject Matter***

10. Claims 10 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**REASONS FOR ALLOWANCE**

11. The following is an examiner's statement of reasons for allowance:

The reason for allowance of the claims is the inclusion of the limitation,

- a) for claim 10, an axial member which is centrally positioned with respect to the outer protective sheath and is formed from a wound piece of composite tape.
- b) for claim 15, the protective sheath is formed from a wound piece of composite tape.

in combination with other limitations in the claim which is not found in the prior art reference of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Response to Arguments***

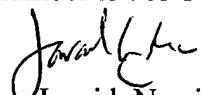
12. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

***Contact***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javaid Nasri whose telephone number is 703 308 5876. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Sircus can be reached on 703 308 3119. The fax phone numbers for the organization where this application or proceeding is assigned are 703 308 7722 for regular communications and 703 308 7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0956.

  
Javaid Nasri  
Examiner  
Art Unit 2839

JN  
jhn  
September 10, 2002

